

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jonathan Jannucci	Team: Team # 5	CCRB Case #: 200506318	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 06/04/2005 4:15 PM	Location of Incident: § 87(2)(b) Queens Village, NY		Precinct: 105	18 Mo. SOL 12/4/2006	EO SOL 12/4/2006
Date/Time CV Reported Tue, 06/07/2005 10:31 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 06/07/2005 10:31 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Anthony Salato	24592	926403	105 PCT
2. POM Joseph Durante	23084	923791	105 PCT
3. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Jennifer Matos	29429	928725	105 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Anthony Salato	Force: Officer Anthony Salato pointed his gun at § 87(2)(b)	§ 87(2)(b)
B.POM Joseph Durante	Force: Officer Joseph Durante pointed his gun at § 87(2)(b)	§ 87(2)(b)
C. Officers	Force: Officers pointed their guns at § 87(2)(b)	§ 87(2)(b)
D.POM Anthony Salato	Abuse: Officer Anthony Salato entered and searched § 87(2)(b) in Queens.	§ 87(2)(b)
E.POM Joseph Durante	Abuse: Officer Joseph Durante entered and searched § 87(2)(b) in Queens.	§ 87(2)(b)
F.POM Anthony Salato	Abuse: Officer Anthony Salato frisked § 87(2)(b)	§ 87(2)(b)

Synopsis

On June 4, 2005 at approximately 4:15 PM, § 87(2)(b) was in his apartment located at § 87(2)(b) in Queens. § 87(2)(b) heard knocking at his door, and when he opened it he saw four officers standing outside of his apartment. Two of the officers were identified as Officer Anthony Salato and Officer Joseph Durante. All four officers had their guns drawn and pointed at § 87(2)(b) (allegations A, B, and C). An officer instructed § 87(2)(b) to put his hands in the air and § 87(2)(b) complied. Officer Salato and Officer Durante immediately ran into his apartment (allegations D and E). An unidentified officer placed § 87(2)(b) in handcuffs and escorted him into the hallway. Officer Salato then frisked § 87(2)(b) (allegation F). § 87(2)(b) noticed four additional unidentified officers in the stairwell of the building. After approximately fifteen to twenty minutes, Officer Salato and Officer Durante exited § 87(2)(b)'s apartment. The officers removed the handcuffs and explained that his landlord, § 87(2)(b) had called the police.

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) § 87(2)(b) -years-old, filed his complaint with the CCRB on June 7, 2005. § 87(2)(b) provided a telephone statement on June 13, 2005 (encl. 6). § 87(2)(b) was interviewed on June 15, 2005 (encl. 7a-h). § 87(2)(g)

§ 87(2)(b) stated that on June 4, 2005 at approximately 4:15 PM, he was sitting in his kitchen having something to eat when he heard knocking at his door. § 87(2)(b) lives alone and there was no one else in the apartment with him at the time. Someone then said, "Police, open the door." § 87(2)(b) opened the door and saw four officers with their guns pointed directly at him. Two of the officers were identified as Officer Salato and Officer Durante. The officers stated, "Hands up. Don't move." § 87(2)(b) put his hands in the air, and the officers told him to turn around and put his hands behind his back. Officer Salato and Officer Durante ran into § 87(2)(b)'s apartment. An officer placed § 87(2)(b) in handcuffs, and directed him against a wall outside of his apartment. An officer then frisked the outside of § 87(2)(b)'s pockets. § 87(2)(b) did not see the officer who frisked him. In his telephone statement, § 87(2)(b) stated that Officer Salato handcuffed and brought him outside. Also, § 87(2)(b) originally failed to mention that he was frisked.

When § 87(2)(b) was in the hallway, he noticed four more unidentified officers in the stairwell of the building. § 87(2)(b) waited outside of his apartment for Officer Salato and Officer Durante. During this time, nothing was said to § 87(2)(b) and he remained facing the wall. § 87(2)(b) could not see into his apartment. After approximately fifteen to twenty minutes, Officer Salato and Officer Durante exited the apartment. In his telephone statement, § 87(2)(b) indicated that the officers were in his apartment for thirty minutes. One of the officers stated, "Take the handcuffs off him. This landlord is a crazy woman. She had me driving a hundred miles an hour to get here, and no guns are here." An officer took the handcuffs off of § 87(2)(b) and either Officer Durante or Officer Salato explained to § 87(2)(b) that his landlord called the police and stated that he was in possession of guns. § 87(2)(b) explained that he and § 87(2)(b) have been having a landlord tenant dispute for several years.

At this point, § 87(2)(b) went inside his apartment to get a pen and paper in order to take down the officers' information. Officer Salato saw what § 87(2)(b) was doing and the officer wrote the following down on a piece of paper: "Landlord/Tenant Court, 125-01 Queens Blvd. PO Salato #24592, PO Durante #23084" The officer then recommended that § 87(2)(b) go to the court and make a complaint against his landlord. The officers then left. During the interview, § 87(2)(b) stated, "I'm not really putting the blame on the cops for not having the proper the information."

Results of Investigation

Witness Testimony:

§ 87(2)(b) was not interviewed because she did not witness § 87(2)(b)'s interaction with the officers. Furthermore, § 87(2)(b) provided a statement during her 911 call, § 87(2)(g)

Officer Testimony:

PO Anthony Salato (105th PCT)

On June 4, 2005, Officer Salato was assigned to anti-crime (auto robbery) in the 105 PCT. He was working from 9:30 AM to 6:05 PM with Officer Joseph Durante. Officer Salato was dressed in plainclothes. The officers were driving an unmarked green Chevy Impala (RMP #8833). Officer Salato did not have any entries in his memo book regarding the incident (encl. 9a-b). Officer Anthony Salato was interviewed at the CCRB on September 28, 2005 (encl. 10a-b).

Officer Salato stated that on June 4, 2005 he received a dispute with a firearm call over the radio. Officer Salato could not recall if he was the operator of the vehicle. The only information that the officer received over the radio was that there was a male with a gun at a certain location. Officer Salato could not recall whether he called back Central in order to request additional information. The original radio call was assigned to another unit, but Officer Salato and Officer Durante responded to the location because it was a "gun run." When Officer Salato and Officer Durante arrived at the location, they observed § 87(2)(b) standing outside of a beauty salon. She was "flagging" the officers over. Officer Durante and Officer Salato were the first two officers to respond to the location. Officer Salato approached § 87(2)(b) and asked who had the gun. § 87(2)(b) responded, "He lives upstairs." Officer Salato then asked, "Did he take it out, did he point it at you?" § 87(2)(b) responded, "Yes." She then told Officer Salato that § 87(2)(b) lives on the second floor in the apartment on the right. § 87(2)(b) also stated that she was the landlord of the building. At this point, approximately ten officers in four RMPs responded to the location. Officer Salato recalled that Officer Jennifer Matos and Officer Christopher Alden were present during the incident.

Officer Salato, Officer Durante, and the other officers entered the building. The door to the main entrance of the building was open at the time. At least one officer remained outside with § 87(2)(b). Officer Salato and Officer Durante walked up the stairs to the second floor of the building. Officer Salato and Officer Durante had their guns drawn at the time. Officer Salato stated that he could not recall if any other officers had their guns drawn. Officer Salato knocked on the door and stated, "Police, open up." § 87(2)(b) asked, "Who is it?" Officer Salato again said that it was the police and § 87(2)(b) opened the door. During the interview, Officer Salato stated that neither he nor Officer Durante pointed his gun at § 87(2)(b). Officer Salato told § 87(2)(b) to put his hands up, and he immediately complied. Officer Salato asked if they could enter the apartment and § 87(2)(b) said, "Yes." Officer Salato immediately frisked § 87(2)(b). Officer Salato stated that he frisked § 87(2)(b) to check for a weapon. After he did not find a weapon, Officer Salato walked into the rooms to briefly check if anyone else was in the apartment. Besides the visual inspection, Officer Salato did not search the apartment in any capacity. Officer Durante did not leave the living room area. Officer Salato asked § 87(2)(b) if anything had happened. Specifically, the officer asked him if he had a problem with the landlord downstairs. § 87(2)(b) explained that they have been having a dispute regarding rent money. Officer Salato then told § 87(2)(b) that § 87(2)(b) claimed that he had pointed a gun at her. § 87(2)(b) stated, "The lady is full of shit, we had an argument." At this point, the other officers were in the hallway.

Officer Salato then went downstairs to speak with § 87(2)(b). She clarified that she did not see § 87(2)(b) with a gun, but rather she was told that he was going to get a gun. § 87(2)(b) explained that § 87(2)(b) had been refusing to pay the rent for a long time. Officer Salato provided the landlord with the information for the landlord tenant court and went back upstairs. § 87(2)(b) was standing outside in the hallway talking to some of the officers. Officer Salato then provided his name and shield number to § 87(2)(b).

§ 87(2) He also provided § 87(2)(b) with the information for the landlord tenant court. The officers left and Officer Durante filled out a stop and frisk report. Officer Salato stated that the entire incident only lasted a few minutes, and that § 87(2)(b) was not, at any point, handcuffed.

PO Joseph Durante (105th PCT)

On June 4, 2005 Officer Durante was working anti-crime (auto robbery) in the 105th Precinct. He was working from 9:30 AM to 6:05 PM with Officer Salato. Officer Durante was dressed in uniform and was assigned to RMP # 8333. Officer Durante could not recall if he was the operator of the vehicle. He stated that he is normally dressed in plainclothes, but on that particular day they were dressed in uniform. Officer Durante's memo book indicates that at 4:00 PM, he responded to 10-52 (dispute with firearm) radio call at 211-49 Jamaica Avenue. At 4:10 PM, no arrest was made but "another report was prepared." Officer Durante determined that it was a landlord tenant dispute (encl. 11a-b). Officer Joseph Durante was interviewed at the CCRB on November 1, 2005 (encl. 12a-c).

§ 87(2)(g)

Officer Durante stated that § 87(2)(b) did not specify which apartment § 87(2)(b) was in. She only indicated that he was in the apartment upstairs, and according to Officer Durante there was only one apartment on the second floor. Approximately four officers responded to the location, but Officer Alden and Officer Matos were not among them. Both Officer Durante and Officer Salato had their guns drawn and pointed at § 87(2)(b) when he opened the door. Due to where the doorway was positioned, Officer Durante had limited visibility into § 87(2)(b)'s apartment. Officer Durante stated that he had his gun pointed at § 87(2)(b) because § 87(2)(b) told him that § 87(2)(b) had a gun, and he was protecting himself. Officer Durante stated that the officers did not ask for consent to enter the apartment. Either he or Officer Salato frisked § 87(2)(b). After § 87(2)(b) was frisked, both Officer Durante and Officer Salato "looked around the apartment to make sure that nobody was dead in there." The two officers walked into every room of the apartment and visually searched each room. Officer Durante stated that an officer possibly stayed with § 87(2)(b) near the entrance of the apartment, but § 87(2)(b) was not, at any point, handcuffed. Beside the visual inspection that the officers conducted, Officer Durante stated that he and Officer Salato did not open any drawers or closets. Officer Durante stated that a stop and frisk report was filled out, but he could not recall who prepared the report.

PO Jennifer Matos (105th PCT)

On June 4, 2005, Officer Matos was assigned to anti-crime in the 105th Precinct. Officer Matos' scheduled tour was from 9:30 AM to 6:05 PM. However, Officer Matos took lost time and ended her tour at 1:00 PM. Officer Matos was working with Officer Durante, Officer Salato, and Officer Alden. They were assigned to an unmarked green sedan (RMP # 8333). Officer Matos' memo book indicates that she ended her tour at 1:00 PM (encl. 13a-b). Officer Matos was interviewed at the CCRB on December 7, 2005 (encl. 14a-b).

Officers not interviewed:

The 105th Precinct roll call for June 4, 2005 indicates that Officer Alden was assigned to work anti-crime (robbery auto) from 9:30 AM to 6:05 PM (encl. 18a-j). However, Officer Alden's memo book indicates that on June 4, 2005, he took lost time and ended his tour at 4:05 PM (encl. 15a-c). Officer Alden was not interviewed because he was off duty and was not present during the incident.

Communication records

SPRINT (encl. 16a-b)

The SPRINT printout indicates that at 4:04 PM a female caller, "§ 87(2)(b)" called 911 to report that her tenant in § 87(2)(b) was in possession of a gun. At 4:18 PM a robbery auto sector reported the landlord tenant dispute as a non-crime and referred it to another agency.

Radio communications (encl. 17a-e)

At 4:04 PM, § 87(2)(b) called 911 to report that someone told her that § 87(2)(b) purchased two guns. At 4:08 PM, the dispatcher at Central called the incident over as a dispute with a firearm at § 87(2)(b). A sergeant in the 105th PCT radioed Central and requested that the dispatcher call back § 87(2)(b) to obtain a description. The dispatcher called § 87(2)(b). § 87(2)(b) clarified that she did not see any guns, but rather that someone told her that § 87(2)(b) had purchased the guns. The dispatcher relayed that information to the unidentified sergeant. At 4:20 PM, a male officer from the 105th PCT robbery auto unit radioed Central and informed them that there were no guns involved in the incident.

Police Documentation

Stop and Frisk Report Worksheet (encl. 8a-b)

The report, prepared by Officer Salato, indicates that the officers suspected § 87(2)(b) of criminal possession of a weapon. According to the report, § 87(2)(b) was stopped because there was a “radio run for a man with a gun” and § 87(2)(b) fit a description. § 87(2)(b) was frisked because a “caller stated suspect had firearm.” § 87(2)(b) was not searched and no weapon was found. The report indicates that the officers explained the reason for the stop, and that § 87(2)(b) was “cooperative.” The officers were dressed in uniform.

Complainant's CCRB and criminal history:

§ 87(2)(b) has filed six prior complaints with the CCRB (encl. 4). § 87(2)(b)

Officer's CCRB history:

Officer Salato has been a member of the NYPD for twelve years and as of the date of this report, he has three substantiated allegations on his CCRB record (encl. 2a-c). Officer Salato was substantiated for discourteous word in relation to CCRB case 200406994. A command discipline was recommended and the NYPD imposed a penalty of instructions. Officer Salato was also substantiated for refusal to provide name and shield number and offensive language based on race in relation to CCRB case 200503618. Charges were recommended, but the NYPD disposition is pending. Officer Durante has been a member of the NYPD for six years and as of the date of this report, he does not have any substantiated CCRB cases on his record (encl. 3).

Conclusions and Recommendations

Undisputed facts:

Officer Salato and Officer Durante responded to a 10-52 (dispute with firearm) at § 87(2)(b). Officer Salato and Officer Durante entered the building and knocked on § 87(2)(b)'s door. When § 87(2)(b) answered the door, Officer Salato and Officer Durante had their guns drawn. Officer Salato and Officer Durante immediately entered the apartment. Officer Salato frisked § 87(2)(b).

Issues in dispute:

§ 87(2)(b) alleges that when he opened the door, Officer Durante, Officer Salato, and two additional officers were standing in the doorway with their guns pointed directly at him. According to § 87(2)(b) he was immediately taken out of his apartment and handcuffed. § 87(2)(b) alleged that the officers spent fifteen to twenty minutes searching his apartment.

Officer Identification:

§ 87(2)(b) obtained Officer Salato and Officer Durante's names during the incident. Both officers acknowledged their participation in the incident during their CCRB interviews. Although Officer Salato indicated that Officer Matos and Officer Alden were present during the incident, both officers took lost time and ended their tour early that day. The two officers were off duty and were not present during the

incident. Due to the lack of information provided in the SPRINT, the undersigned was not able to identify the other two subject officers.

Credibility Assessment:

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

Allegation A: Force: Officer Anthony Salato pointed his gun at § 87(2)(b)

Allegation B: Force: Officer Joseph Durante pointed his gun at § 87(2)(b)

Allegation C: Force: Officers pointed their guns at § 87(2)(b)

§ 87(2)(b) alleged that Officer Salato, Officer Durante, and two unidentified officers had their guns drawn and pointed at him when he opened his apartment door. Officer Salato admitted to having his gun drawn, but denied pointing it at § 87(2)(b). Officer Durante, however, stated that both he and Officer Salato had their guns drawn and pointed at § 87(2)(b). Officer Durante put his gun back in his holster after § 87(2)(b) was frisked and no gun was found. Officer Salato and Officer Durante both stated that additional officers were present but they were not able to identify them. They were not aware of any other officers having their guns drawn and pointed at § 87(2)(b). § 87(2)(b) did not obtain these officers' names and could only provide general physical descriptions of them. The SPRINT did not indicate which units responded to the location. Therefore, the undersigned was not able to identify these additional subject officers. § 87(2)(g)

[REDACTED]

As determined in *PD v. Gliner*, "An officer can draw his firearm and point it at another person so long as he has reasonable fear for his safety" (encl. 1a-b). § 87(2)(g)

[REDACTED]

Allegation D: Abuse of Authority: Officer Anthony Salato entered and searched § 87(2)(b) in Queens.

Allegation E: Abuse of Authority: Officer Joseph Durante entered and searched § 87(2)(b) in Queens.

§ 87(2)(b) alleged that after he was taken outside into the hallway, Officer Salato and Officer Durante entered and searched his apartment. § 87(2)(b) did not see the officers search his apartment, but stated that they were inside for approximately fifteen to twenty minutes. According to Officer Salato, when § 87(2)(b)

opened the door, the officer instructed him to put his hands in the air. Officer Salato then asked § 87(2)(b) if the officers could enter the apartment and according to Officer Salato, § 87(2)(b) said yes. Officer Salato then stepped into the apartment and frisked § 87(2)(b). After no weapon was found, Officer Salato and Officer Durante walked into each room of the apartment to see if anyone else was there. Officer Durante, on the other hand, indicated that the officers did not, at any point, ask for consent to enter the apartment. Officer Durante stated that after § 87(2)(b) opened the door he was immediately frisked inside of the apartment. § 87(2)(g)

§ 87(2)(b) stated that the officers were in the apartment for approximately fifteen to twenty minutes. The communication records indicate that the entire incident, from the moment the dispatcher made the initial radio run up until when an officer from the robbery auto unit called the incident over as landlord tenant dispute, lasted thirteen minutes. § 87(2)(g)

According to Kamins' Search and Seizure, "A police officer can enter a premises without a warrant to protect individuals in distress, to assist victims of crimes that have just occurred, or to investigate suspicious signs of impending danger" (encl. 1c-d). § 87(2)(g)

Allegation F: Abuse of Authority: Officer Anthony Salato frisked § 87(2)(b)

§ 87(2)(b) alleged that after he opened the door, he was taken outside by an officer and frisked. § 87(2)(b) was facing the wall at the time and could not see which officer frisked him. In his statement, Officer Salato stated that after § 87(2)(b) opened his door, he immediately frisked him inside of his apartment. Officer Salato later prepared the stop and frisk report. Officer Durante corroborated Officer Salato's testimony, but stated that either he or Officer Salato frisked § 87(2)(b). Since § 87(2)(b) was inconsistent regarding which officer handcuffed him and took him outside, and given the stressful nature of the incident, the undersigned credits the officers' account of the frisk.

According to New York Criminal Procedural Law [§140.50(3)], "When...a police officer...reasonably suspects that he is in danger of physical injury, he may search such person for a deadly weapon or any instrument, article or substance readily capable of causing serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons" (encl. 1e-f). § 87(2)(g)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: